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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
the Commission's Forfeiture Policy ) CI Docket No. 95-6  
Statement and Amendment of )  
Section 1.8 of the Rules to ) DOCKET FILE COPY ORIGINAL  
Incorporate the Forfeiture Guidelines )

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), by its attorneys and pursuant to Section 1.415<sup>1</sup> of the Federal Communications Commission's (Commission) Rules, respectfully submits its Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. In its NPRM the Commission seeks comment on its Policy Statement, Standards for Assessing Forfeitures<sup>2</sup> and its proposal to amend Section 1.80 of the Commission's Rules<sup>3</sup> to incorporate the forfeiture guidelines set forth in the Forfeiture Policy Statement.

As background, the Commission originally adopted the proposed forfeiture guidelines without notice and without giving interested parties any opportunity to comment. Subsequently, the United States Court of Appeals set aside the forfeiture standards, finding that the penalty schedule adopted by the Commission was not merely a "policy statement" as claimed by the Commission, but rather a substantive rule and therefore should have been released

<sup>1</sup> 47 C.F.R. 1.415.

<sup>2</sup> 6 FCC Rcd 4695 (1991) recon. denied, 7 FCC Rcd 5339 (1992), revised 8 FCC Rcd 6215 (1993) (Forfeiture Policy Statement).

<sup>3</sup> 47 C.F.R. 1.80.

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for comment by interested parties.<sup>4</sup> In addition to setting aside the forfeiture guidelines on this procedural basis, however, the Court went on to question the fundamental substantive defect in the Commission's proposed forfeiture guidelines, i.e., that the forfeiture guidelines would result in grossly disparate and discriminatory treatment of similarly situated "offenders."

SWBT does not object to the Commission providing "clearer guidance to the public regarding the forfeitures that can be expected in response to specific violations" through the use of forfeiture guidelines.<sup>5</sup> SWBT strenuously objects, however, to the discriminatory manner in which the Commission proposes to set the "base amount" on which the ultimate amount of any Section 503 forfeiture would be "based" under the Commission's proposed forfeiture guidelines. The proposed guidelines contemplate a base forfeiture amount for each type of violation, which amount would be calculated as a percentage (varying on the violation) of the statutory maximum for different types of carriers. The proposed forfeiture guidelines also include both "Upward Adjustment Criteria" and "Downward Adjustment Criteria" which the Commission may apply to the base amount of any Section 503 forfeiture.<sup>6</sup> Thus, as an example, the proposed forfeiture guidelines would set a "base amount" for a Section 503 forfeiture based on

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<sup>4</sup>United States Telephone v. Federal Communications Commission, 28 F.3d 1232, 1233 (D.C. Cir. 1994) ("USTA").

<sup>5</sup> NPRM at para. 3.

<sup>6</sup> The proposed forfeiture guidelines also would permit the Commission to apply the "Downward Adjustment Criteria" to non-Section 503 forfeitures. SWBT supports this provision.

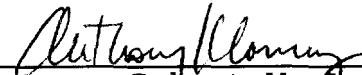
misrepresentation/lack of candor at 80% of the statutory maximum. By basing the "base amount" of the forfeiture on the type of violator, rather than focusing on the nature of the conduct, the forfeiture guidelines in this scenario would set the "base amount" at \$80,000 for a common carrier like SWBT, but only \$20,000 for a cable company, for the exact same conduct! The resulting disparate and discriminatory regulatory treatment of common carriers flies in the face of the most basic and fundamental principle which should guide the Commission at every step -- regulatory parity.

The Commission has no reasonable basis for the disparate treatment it proposes. The Commission should recognize that regulatory parity in the face of rapidly converging industries, e.g., cable and telephone, is essential. The Commission should not determine forfeiture amounts on the "classification" of the violator, but rather on the nature of the act for which the forfeiture is being imposed, irrespective of the regulatory "label" attached to the violator.

Respectfully submitted,

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March 27, 1995

**CERTIFICATE OF SERVICE**

I, Liz Jensen, hereby certify that the foregoing  
Comments of Southwestern Bell Telephone Company in CI Docket  
No. 95-6 have been served this 27th day of March, 1995 to  
the Parties of Record.

Liz Jensen  
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March 27, 1995

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